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COURT OF APPEALS  
DIVISION II

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No. 47830-7-II

STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

DEPUTY

PATRICE CLINTON and RICHARD SORRELS,

Appellants,

v.

CHRISTOPHER HONSE and SALLY HONSE,

Respondents.

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BRIEF OF RESPONDENTS HONSE

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## I. INTRODUCTION

Appellants Richard Sorrels and Patrice Clinton challenge the Order Granting Plaintiffs' Summary Judgment Motion on Damages (CP 1557-59) and Judgment (CP 1554-56) entered by the Honorable Jack Nevin on June 26, 2015. These orders followed prior summary orders in which the trial court held that Clinton and Sorrels were guilty of unlawful detainer of the Honses real property. The Judgement challenged on this appeal awarded respondents Christopher and Sally Honse damages occasioned by appellants' unlawful detainer. (The Order and Judgment are attached as Appendix A and B, respectively.)

Significantly, the issues presented in this appeal were decided by this Court on September 29, 2015 in a related appeal filed under Case No. 46336-9-II, well before appellants filed their opening brief on January 11, 2016. This Court's decision was not appealed and a Mandate was filed on November 13, 2015. (A copy of the Mandate and Unpublished Opinion is attached as Appendix C.)

The appeal is not only without merit, it is frivolous in that it raises issues recently and clearly decided by this Court. The Honses request this Court to affirm the Summary Judgment Order and Judgment. The Honses also seek attorneys' fees incurred defending this frivolous appeal pursuant to RAP 18.9.

## II. STATEMENT OF THE CASE

### A. The Trial Court Adjudicated The Honses Right Of Possession, Found Appellants Guilty Of Unlawful Detainer And Ordered The Property Restored To The Honses.

Chris and Sally Honse own improved real property located at 8717 Key Peninsula Highway, Lakebay, Washington ("Lakebay Property") via a Trustee's Deed recorded on July 26, 2013 under Pierce County Auditor File No. 201307260255. (CP 1138.)

The Lakebay Property was previously the Honses' home. The house sits on 6.7 acres and is 3,432 square feet, comprised of 4 bedrooms and 2½ bathrooms. They sold their home in 2006 to Patrice Clinton through a seller-financed transaction in which the Honses accepted a promissory note from Clinton that was secured by a deed of trust against the Lakebay Property. Clinton moved in and occupied the house with her significant other Richard Sorrels. (CP 1139.)

Clinton defaulted on the promissory note in 2008, leaving the majority of the purchase price unpaid. After an extremely difficult five-year process that involved multiple lawsuits and four bankruptcies, the Honses were finally able to successfully foreclose, though a Trustee's Sale held on July 12, 2013, and regain title to the property by a Trustee's Deed recorded on July 26, 2013.

Unfortunately, Clinton and Sorrels did not vacate the property following the foreclosure and this lawsuit was commenced. (CP 1-35.) On October 13, 2013, Commissioner Gelman found Clinton and Sorrels guilty of unlawful detainer and entered supporting Findings of Fact and Conclusions of Law and a Judgment directing the issuance of a writ of restitution. (CP 136-144.) Commissioner Gelman's Findings, Conclusions and Judgment were all sustained and also confirmed by summary judgment entered by Judge Culpepper on November 22, 2013. (CP 597-99, 603-05.) The Honses finally obtained possession of the property on November 26, 2013, when the Pierce County Sheriff executed on the writ of restitution. (CP 1139.)

**B. The Trial Court Issued Additional Orders To Restore Possession.**

When the Honses regained possession, the Lakebay Property was in terrible condition. Though Clinton and Sorrels no longer personally occupied the property, the home and surrounding property nonetheless remained occupied with the enormous volume of junk that Clinton and Sorrels accumulated on the Lakebay Property. The Lakebay Property had become a junkyard and was uninhabitable. (CP 1139-40.) When they obtained possession of the Lakebay Property, the house was filled with garbage and junk, packed with furniture, magazines, phonebooks, newspapers, batteries, toilets, old

electronics, clothes and bed linens and garbage. The 6.7 acres of land was covered with 188 vehicles, comprised of deteriorated recreational vehicles, campers, utility trailers, boat trailers, cars, trucks, and motor cycles, as well as boats, tires, scrap metal and other debris. (CP 1140, 1150-90.)

As a result of the junk accumulated on the property and the activities of Sorrels, the Lakebay Property was the subject of a Pierce County code enforcement action from 2009 until July 2014. The County deemed the Lakebay Property a public nuisance and the Lakebay Property was subject to both an Order to Correct (issued on November 10, 2009) and a Notice of Violation and Abatement (issued on January 20, 2010) requiring removal of all vehicles, travel trailers, campers, utility trailers and boats. (CP 808-864, 1140.)

Despite the orders, Sorrels and Clinton did not clear the Lakebay Property of the substantial junk vehicles and debris. While Sorrels was ultimately convicted of a misdemeanor (CP 810, 857-64), the Lakebay Property remained in violation of the Pierce County code and the enforcement action initiated in 2009 remained unresolved when the Honses obtained possession on November 26, 2013. (CP 1140-41.)

Though the Honses were not responsible for any of the actions that led to the code enforcement action, when they gained possession of the Lakebay Property, they became personally responsible. See RCW 7.48.170. Thus, in addition to the fact that the condition of the property basically precluded any meaningful use, the Honses were very concerned about the property's legal status. (CP1141.) They were aware that Sorrels had been subject to another code enforcement action involving different property (9316 and 9410 Glen Cove Road). That other, prior action ultimately led to an abatement judgment (and lien against the relevant properties) in excess of \$22,000 after the County removed and disposed of 59 junk vehicles, 655 tires and various other junk and debris.<sup>1</sup> (CP 1105-7, 1141) The condition of the Honses Lakebay Property was substantially worse and, if the Honses did not clean up the property, they were exposed to a substantially greater abatement assessment.

Moreover, because the Lakebay Property and the many deteriorated vehicles were visible from Key Peninsula Highway, the Lakebay Property was also a significant source of community concern. The Honses were contacted by Pierce County Councilmember Fleming

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<sup>1</sup> The factual background of the code enforcement actions involving the 9316 and 9410 Glen Cove Road properties is set forth in two unpublished decisions by this Court in the record at CP 1118-1137.

who communicated clearly that he and the community expected the Honses to promptly clear the junk from the property. (CP 865-66, 1141.) Finally, the Honses could not hope to re-sell or rent the Lakebay Property if it was not cleared of the substantial junk deposited in the house and on the grounds. (CP 1142.) The Honses would not truly be restored possession of the Lakebay Property unless and until the vehicles and other junk and debris was cleared from the property.

The Honses thus proceeded to take actions necessary to clean-up the property and restore the Lakebay Property to a habitable and useable condition. But they did so only after receiving authorizing orders from the trial court. In anticipation of their responsibilities to clean the Lakebay Property and before the Sheriff executed on the Writ, the Honses requested and received from Judge Culpepper an Order clarifying their obligations on execution of Writ of Restitution. (CP 600-02.) In this Order, Judge Culpepper ruled that the Honses could, without further notice to appellants, dispose of any and all personal property left following execution of the Writ. (*Id.*)

The substantial number of vehicles on the Lakebay Property presented complex issues. The Honses were concerned that some of the vehicles on the Lakebay Property might be owned by people other than one of the defendants to this action. (CP 1142.) Additionally, as

explained in the Declaration of Mark Luppino, Rick Sorrels had been criminally charged and convicted for unlawfully engaging in the sale of vehicles on the Lakebay Property. (CP 808-64.) The Honses wanted to promptly clear the property, but wanted to do so lawfully.

To address these issues Chris Honse worked closely with Pierce County Code Enforcement Officer Mark Luppino. Luppino had been involved with the code enforcement actions against Sorrels while he had possession of the Lakebay Property, as well as the code enforcement actions involving the Glen Cove properties, and he was well aware of the situation the Honses faced. Luppino agreed to come to the Lakebay Property and inspect each vehicle to determine if the vehicles qualified as junk vehicles under the Pierce County Code. (CP 810-11, 1142-43.)

Over a period of four months, with the first visit in December 2013 and the last on March 31, 2014, Luppino and one officer made six visits to the Lakebay Property and inspected every recreational vehicle, camper, car, truck, utility trailer and boat trailer on the site. In total, they inspected 188 vehicles. All but 15 qualified as junk vehicles under the Pierce County Code. (CP 810-11, 1142-44.) After visit, Luppino would determine if a registered owner could be identified and

then prepare a Junk Vehicle Affidavit ("JVA") for each individual qualified vehicle. (CP 810-11.)

Luppino completed and provided to Chris Honse 173 JVAs. (CP 811, 1143.) The process did not end with the issuance of the JVAs. Notably, Luppino's searches revealed that one of the defendants, an LLC owned and controlled by a defendant, was the registered owner of only 34 of the junk vehicles. Registered owners other than a defendant or entity controlled by a defendant were identified for 72 of the junk vehicles. 67 of the junk vehicles had no identifiable registered owner. In order to clear title on the 72 vehicles with registered owners, Honse was required to send a copy of each JVA by certified mail to the registered owner of the vehicle identified in the JVA and allow the owner 14 days to claim the junk vehicle. If no response was received within 14 days, the registered owner loses any claim to the vehicle. (CP 1144.)

To comply with the legal requirements, Chris Honse personally sent out 72 letters with JVAs by certified mail, at an out-of-pocket expense of \$3.79 per mailing and a total of \$272.88, to notify the registered owner that he had the vehicle and that he or she had 14 days to claim the junk vehicle. (CP 1144, 1197-2-4.) Of the 72 certified mailings, only were actually delivered; the rest were returned as

undeliverable. Only three people claimed and retrieved their vehicles. (CP 1144.) As a result, Honse had to make arrangements to remove the remaining junk vehicles. Removal was no easy task.

Honse made several contacts to obtain estimates for removal of these junk vehicles. All but one stated that removal of the vehicles would require a significant payment by Honse. Even with a credit for scrap metal, Honse was looking at net costs for towing and dump fees of \$35,000 to \$40,000 just to remove the vehicles and boats. Others wanted to destroy the vehicles on site, but that was unacceptable to Honse in light of the potential issues associated with disposal of hazardous materials in such a process. (CP 1145.)

However, after many searches, as well as unsuccessful effort to see if public grants may be available to defray the substantial costs, Honse finally found someone who would remove the junk vehicles based only on the value of the vehicles and metals removed and without a cash payment from me. Thus, Honse was able to avoid a significant cost and substantially mitigate their damages in this regard without any on-site demolition. (CP 1145.)

Before moving on the contract, however, Honse first advised the trial court (and simultaneously gave appellants notice) of his efforts and plan to remove the vehicles and other items of personal property.

On May 2, 2014, Judge Jack Nevin entered a Supplemental Order to the November 22, 2013 Order Clarifying Obligations on Execution of Writ Confirming Status of Abandoned Vehicles. (CP 1080-90.) Through this Order, Judge Nevin confirmed that the Honses were authorized to dispose of the vehicles, as well as the other personal property, that appellants failed to remove from the Lakebay Property before the writ of restitution was executed. (*Id.*)

**C. All Of The Trial Court's Orders Restoring Possession To The Honses, Including The Orders Authorizing Removal Of Abandoned Personal Property, Have Been Affirmed By This Court.**

Throughout the course of the litigation, appellants repeatedly asserted that the trial court lacked jurisdiction to decide the Honses right of possession or issue the writ of restitution, and likewise lacked jurisdiction to issue additional orders that served to restore possession to the Honses. Appellants jurisdictional challenges included allegations that the notices issued in connection to the trustee's sale were defective. This Court rejected those challenges. All of the orders and judgments that preceded the summary judgment order on damages that is the subject of this most recent appeal were affirmed by this Court through an unpublished opinion issued on September 29, 2015 under Case No. 45616-8-II and attached as Appendix C.)

**D. The Honses Cleanup Efforts And Request For Damages.**

The Honses have limited resources. Thus, to accomplish this very difficult and complicated task of clearing their property, they "employed" the efforts of their family. The Honses live in Glide, Oregon. Members of their family made countless trips from Glide to Lakebay and back to complete this enormous project. Chris Honse tracked their time and, collectively, the Honse family dedicated well over 1,500 hours to clean the Lakebay Property; of course, all a source of great emotional and physical strain without compensation. (CP 1142.) But, by personally doing much of the work, and, by researching, finding and utilizing recycling and other services, the Honses were able to keep the expenditures related to this clean-up remarkably low.

Ironically, defendants were benefited from the Honses significant efforts to mitigate their damages and the damages requested here are far below that one would reasonably expect in this situation. Recall that the abatement cost incurred by Pierce County to clean up the Glen Cove properties in 2002 (to remove less than half the number of vehicles and 600+ tires) was \$22,000. (CP 1108-11.) The Honses sought only their out-of-pocket costs totaling \$3,200, which costs excluded the value of the significant labor required to complete the clean-up. The Honses' clean-up efforts and costs incurred

are described in the following paragraphs.

At an expense of \$326.05, gravel had to be purchased and put down on the driveway to allow access by the heavy vehicles necessary to tow away the junk vehicles and haul the abandoned tires. (CP 1145, 1206.) Honse had to provide a hazardous material kit at a cost of \$99.45 to be used in the event of oil, lubricant or other chemical spillage in the course of the vehicle removal. (CP 1145, 1208.) Some of the RV's had to be "wrapped" with stretch wrap and tie downs, literally for the purpose of ensuring that they did not fall apart while being transported. The necessary supplies cost \$105.36. (CP 1145-46, 1210).

There were also in excess of 500 abandoned tires left on the Lakebay Property. The Honses received estimates from various facilities to dispose of these tires ranged from \$1,000 from L&S Tires to \$2,500 from Olympic View Transfer. However, because Pierce County had declared the Lakebay Property a junk yard, the Honses were able to work with the Washington State Department of Ecology to grant fund a contract to remove the more than 500 abandoned tires on the Lakebay Property without charge to Honse. The tires were removed pursuant to the grant-funded contract on June 20 and June

24, 2014 and, as a result, this significant cost was avoided. (CP 1146, 1212.)

The Honses made a total of 38 trips to Olympic View Transfer Station and the Purdy Transfer Station to dispose of the garbage and other non-recyclable waste from both inside the home and the surrounding grounds. Wood-based debris and waste was taken to North Mason Fiber Company at \$10 per truck load. The dump fees necessarily paid to clear the Lakebay Property totaled \$943.38. (1146, 1214-32.) The Honses utilized "Hazardous Waste Days" at the Purdy Transfer Station to dispose of 2,000 florescent light bulbs, propane cylinders, paint, oil and other hazardous wastes at no charge, again mitigating damages. They also removed from the house and properly recycled over 100 car batteries (30 of which had been stored in the house). (CP 1146.)

The Honses worked hard to recycle as much as possible. They made multiple trips to Key Center Transfer to recycle and dispose of boxes of newspapers, magazines, phone books, plastic containers and other papers. They also made several donations. Boxed and canned food that had not expired was donated to a local food bank. Furniture was donated to Habitat for Humanity. 40 lifejackets were donated to Gig Harbor Medic One/Fire for their free loaner program. 12 boxes of

useable paper, notebooks, folders and binders were donated to Peninsula Middle School. A truck full of 25 old large TVs, 32 printers, typewriters, DVD players, computers, phones, car stereos, fans and wires and cables was delivered to Electronics Recycling. 30 large bags of clothes, 45 boxes of books, 18 large bags of linens, 20 boxes of VHS tapes and multiple boxed of various household items were donated to Goodwill. (CP 1147.)

As a result of their efforts, on July 8, 2014, Mark Luppino wrote the Honses thanking them for their actions to clean up the property and, significantly, informing them that the Lakebay Property was officially in compliance with the Pierce County Code and that Code Enforcement File No. 37303 was finally closed. (CP 1146, 1237.)

Prior to the clean-up, the Honses were required to expend funds to complete the eviction and secure the premises. The Pierce County Sheriff charged a fee of \$270 to perform its duties in executing on the writ of restitution. (CP 1147, 1236.) Also as a condition of execution, the Pierce County Sheriff required the Honses to purchase a surety bond to indemnify the Sheriff at a cost of \$1,000. (CP 1147, 1238.) Finally, to secure the premises, the Honses changed the locks at a cost of \$97.89 and erected a fence and gate at a cost of \$85.00. (CP 1147-48, 1240-41.) This was necessary to keep the defendants off

the property, as well as strangers coming on to the property to search through the junk. (CP 1148.)

The above-described expenses combine to total \$3,200.01. This excludes the value of the substantial man hours the Honses contributed to the effort and the significant fuel expenses (approaching \$5,000) incurred traveling to and from Oregon and to and from the waste and recycle stations. All of the identified expenses were occasioned by Sorrels and Clinton's unlawful detainer of the Lakebay Property, including their continued unlawful occupation with the substantial junk they failed to remove before the Sheriff executed on the writ of restitution. (CP 1146.)

Additionally, the Honses were denied use of their property, at the very least, for the time period that Sorrels and Clinton continued to occupy the property after Commissioner Gelman found them to be guilty of unlawful detainer (October 13, 2013) until the Sherriff executed on the writ of restitution (November 26, 2013). (CP 1148.) The fair market rent for the 44 days that Clinton and Sorrels continued to occupy the Lakebay Property is no less than \$1,200. (*Id.*)

**E. The Trial Court's Summary Judgment On Damages.**

The Honses presented a motion for summary judgment seeking a damages award against appellants for \$4,400. Appellants'

opposition to the motion is set forth in two pleadings. A legal memorandum as presented through which appellants asserted that the damages claim was an unauthorized attempt to obtain a deficiency judgment following a nonjudicial foreclosure. (CP 1242-47.) The arguments asserted in that memorandum are not asserted in appellants' opening brief. The other pleading presented was the Declaration of Richard Sorrels (CP 1250-52), through which Sorrels asserted the same jurisdictional challenges and claimed rights to recover the abandoned personal property that were subsequently rejected by this Court in its September 29, 2015 unpublished opinion. (Appendix C.)

Notably absent from appellants opposition was any challenge or rebuttal to the evidence regarding the out-of-pocket expense the Honses incurred to clean up the property. Sorrels asserted, without corroboration or substantiation that the property abandoned was not junk, but had value. Regardless, his challenge was premised on his claim that the Court did not have jurisdiction to restore possession of the Lakebay Property to the Honses or did not have jurisdiction to authorize the Honses to dispose of the personal property left behind. (*See* CP 1250-52.)

Judge Nevin granted the Honses' summary judgment motion and entered Judgment against appellants for the principal sum of \$4,400. (CP 1554-59 at Appendices A and B.) This appeal followed. (CP 1560-65.)

### III. ARGUMENT

#### A. Appellants' Jurisdictional Challenge Based Upon Alleged Inadequate Notices In The Non-Judicial Foreclosure Has Already Been Rejected By This Court.

Appellants first assert that the Honses failed to provide a 60-day notice to vacate pursuant to RCW 61.24.060(2) prior to commencing the unlawful detainer action. Based on this claimed failure to provide notice, and citing RCW 59.12.032, appellants assert that the trial court did not have jurisdiction to issue a writ of restitution or restore possession to the Honses. Appellants assert that, correspondingly, the trial court did not have jurisdiction entertain the Honses' damages occasioned by appellants' unlawful detainer. (Appellants Brief at pp. 3-4.)

Appellants asserted the same jurisdictional challenge in their first appeal in this unlawful detainer action and this Court rejected the challenge.

Clinton and Sorrels first argue that the Honses were required to provide 60 days' notice to vacate under RCW 59.12.032. Because 60 days' notice to

vacate was not provided, they argue that the court erred by issuing a writ of restitution. We disagree.

Clinton and Sorrels point to RCW 59.12.032, which requires that unlawful detainer actions initiated under chapter 59.12 RCW comply with the requirements of RCW 61.24.040 and .060. However, those statutes do not require the Honses to give Clinton and Sorrels 60 days' notice. Because the Honses claimed title to the property as the result of a trustee's sale, chapter 61.24 RCW applies. RCW 61.24.060(2) requires the purchaser at a trustee's sale to provide notice to the occupants and tenants of *tenant-occupied property*. The phrase "tenant-occupied property" is defined as "property consisting solely of residential real property that is the principal residence of a *tenant* subject to chapter 59.18 RCW." RCW 61.24.005(15) (emphasis added). As used in that definition, a "tenant" subject to chapter 59.18 RCW is "any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a *rental agreement*." RCW 59.18.030(21) (emphasis added). Additionally, the section of the written notice form providing 60 days' notice expressly applies to "tenant[s] or subtenant[s] in possession of the property that was purchased." RCW 61.24.060(2).

Here, neither Clinton nor Sorrels occupied the property under a rental agreement. Clinton was the grantor under the deed of trust, not a tenant of the property. Sorrels testified during the show cause hearing that he was not a tenant. Thus, the Honses were entitled to possession on the 20th day following the trustee sale, and did not need to give 60 days' notice.

The Honses complied with the applicable 20-day requirement before seeking possession of the property. The trustee's sale occurred on July 12, 2013. The Honses filed their complaint for unlawful detainer and for order of eviction on September 24, 2013. Clinton and Sorrels accepted service of the summons, complaint, and order to show cause on

October 17, 2013. Because the Honses did not seek to obtain possession until more than 20 days after the trustee's sale, the superior court properly issued the writ of restitution. Substantial evidence supports the finding of fact that the Honses provided adequate notice to Clinton and Sorrels. *Casterline*, 168 Wn. App. at 381.

(Appendix C, Opinion at pp. 8-9.)

Questions determined on a first appeal, or which might have been determined had they been presented, will not again be considered on a subsequent appeal of the same case if there is no substantial change in the evidence at a second determination of the cause. *Adamson v. Traylor*, 66 Wn.2d 338, 339, 402 P.2d 499 (1965); *Clark v. Fowler*, 61 Wn.2d 211, 213, 377 P.2d 998 (1963); *Kennett v. Yates*, 45 Wn.2d 35, 36-37, 272 P.2d 122 (1954). The doctrine provides that once there is an appellate court ruling, its holding must be followed in all of the subsequent stages of the same litigation. *State v. Roy*, 147 Wn. App. 309, 314, 195 P.3d 967 (2008); *Roberson v. Perez*, 156 Wash.2d 33, 41, 123 P.3d 844 (2005); *Lutheran Day Care v. Snohomish County*, 119 Wash.2d 91, 113, 829 P.2d 746 (1992). The doctrine "seeks to promote finality and efficiency in the judicial process." *Roberson*, 156 Wn.2d at 41.

The un-appealed decision of this Court is now the law of the case. Both the trial court and this Court have determined that that the

notices provided in the non-judicial foreclosure complied with the law. This Court has affirmed the underlying orders adjudicating the Honses' right of possession and the orders are beyond reproach in this second appeal.

**B. The Trial Court Awarded Only Damages Occasioned By Appellants Unlawful Detainer Of The Lakebay Property As Authorized By RCW 59.12.170.**

Appellants next unilaterally characterize the Honses' damages claim as an "ordinary damage claim" that may only be decided by a court of general jurisdiction, as opposed to a court sitting in the limited jurisdiction created by the unlawful detainer statute. Relying on their previous jurisdictional challenge (*see, section A, supra*), appellants argue that the trial court could not decide the issue because "the right of possession has not yet ceased to exist." (Appellants' Brief at p. 6.) Appellants assert: "the issue of possession was still at the COA, and a jurisdiction issue had been raised in Sorrels' declaration. Both items would preclude the cessation of the right of possession issue." (*Id.* at p. 5.)

Appellants' argument fails because they have mischaracterized the Honses damages award. While the unlawful detainer statute does only afford a trial court limited jurisdiction, the statute does authorize the award of certain damages. RCW 59.12.170 authorizes the trial

court to (1) enter judgment for restitution of the premises and (2) “assess damages occasioned to the plaintiff by any ... unlawful detainer, alleged in the complaint and proved at the trial”.

Though they certainly could have pursued them in an “ordinary damages” claim, the Honses did not seek damages for significant damage to their property, including the substantial damage to the septic system and the damage to the interior of the home. Instead, the sought and were awarded only damages occasioned by appellants’ unlawful detainer – expenses necessarily incurred to remove the appellants and their personal property from the Lakebay Property after they were found guilty of unlawful detainer. Despite that the Honses could not rent or sell the property until after all of the junk was removed, they only sought and were awarded rent for 44 days, which was the period of time that Sorrels and Clinton continued to occupy the Lakebay Property after they were found guilty of unlawful detainer and until the Sherriff executed on the writ of restitution. The trial court acted within the jurisdiction afforded by the unlawful detainer statute, chapter 59.12 RCW when it awarded damages to the Honses.

Even if some of the damages awarded could be construed as “ordinary damages” outside the reach of the unlawful detainer statute, appellants challenge remains without merit. An unlawful detainer

action may be converted to a general civil suit “where the right of possession ceases to be at issue at any time between commencement of the unlawful detainer action and trial of that action.” *Munden v. Hazelrigg*, 105 Wn.2d 39, 41, 711 P.2d 295 (1985).

Here, the right of possession ceased to be an issue upon Commissioner Gelman’s entry of the Findings of Fact and Conclusions of Law finding and concluding that the Honses hold the right of possession to the Lakebay Property and appellants were guilty of unlawful detainer. (CP 136-41) Based on his Findings and Conclusions, Commissioner Gelman entered Judgment, leaving the issue of damages to be resolved through a trial. (CP 142-44.) Appellants never assigned error to any of Commissioner Gelman’s Findings. (Appendix C at p. 11, n. 4.) Moreover, Commissioner Gelman’s Findings and Conclusions were sustained against appellants’ revision motion (CP 597-99); and were separately confirmed on a motion for partial summary judgment (CP 603-05.)

The trial court fully adjudicated the issue of possession, and thus possession ceased to be an issue in the case before the trial court, before the trial court considered and rendered a decision on damages. That Clinton and Sorrels appealed (without a stay) is irrelevant to the status of the case as before the trial court. In any

event, Clinton and Sorrels' appeal challenging the orders regarding possession have been decided and the trial court's summary orders affirmed.

A trial court need not formally announce or expressly state that it has converted an unlawful detainer action to an ordinary civil proceeding. It need only proceed in a manner consistent with conversion. *Barr v. Young*, 187 Wn. App. 105, 347 P.3d 947, 951 (2015). It is the Honses position that only damages authorized by the unlawful detainer statute were awarded and, thus conversion was not necessary to provide the trial court with the necessary jurisdiction to make the award. However, *if* this Court deemed any portion of the damages awarded as "ordinary damages," possession was no longer issued and the case was sufficiently converted.

**C. Appellants' Challenge Regarding Right Of Possession Of Abandoned Personal Property Has Already Been Rejected By This Court.**

Finally, Clinton and Sorrels argue that the trial court did not have authority to authorize the Honses to dispose of the abandoned personal property. They again assert that "the right to possess had not yet ceased to exist." (Appellants' Brief at p. 6.) Based on a claimed right to the personal property, they assert that the property exceeds the value of the damages award. (*Id.*)

But this issue was raised and rejected in their first appeal. Appellants had no continued right of possession of the personal property they left behind on the Lakebay Property. This Court explained:

Finally, Clinton and Sorrels argue that the superior court erred in not requiring the Honses to store the substantial property left behind. The Honses argue that Clinton and Sorrels were not entitled to storage rights conferred under the Residential Landlord-Tenant Act, chapter 59.18 RCW. We agree with the Honses.

When serving a *residential tenant* with a writ of restitution under RCW 59.12.100, the sheriff must provide written notice to the tenant that the landlord must store the tenant's property if the tenant serves a written request on the landlord to do so. RCW 59.18.312(5). ‘ “Although the court [in an unlawful detainer action] does not sit as a court of general jurisdiction to decide issues unrelated to possession of the subject property, it may resolve any issues necessarily related to the parties' dispute over such possession.” ‘ *Excelsior Mortgage Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 344-45, 287 P.3d 21 (2012) (alteration in original) (quoting *Port of Longview v. Int'l Raw Materials, Ltd.*, 96 Wn.App. 431, 438, 979 P.2d 917 (1999)).

Clinton and Sorrels cite RCW 59.18.312(5) for the proposition that execution of a writ afforded them the right to require the Honses to store the substantial property left behind. However, RCW 59.18.312(5) refers to the duties of “the landlord” and the service of a written request by “the tenant.” As discussed previously, Clinton (as grantor) and Sorrels (as occupant) do not qualify as residential tenants—neither do the Honses qualify as landlords. The Honses brought this action under the Deed of Trust Act, chapter 61.24 RCW. RCW 61.24.060 states that a “purchaser shall also have a right to the summary

proceedings to obtain possession of real property provided in chapter 59.12 RCW." RCW 61.24.060(1). The language of this statute provides a *purchaser* with a mechanism to obtain possession of the property; it does not copy the entirety of chapter 59.12 RCW into chapter 61.24 RCW.

In fact, RCW 61.24.060 does not prescribe any responsibility to a purchaser at a trustee's sale to store property under chapter 61.24 RCW. On this point, the case of *Excelsior Mortgage Equity Fund II, LLC v. Schroeder* is instructive. In *Excelsior*, the purchaser at a trustee's sale voluntarily elected to utilize portions of RCW 59.18.312, specifically notice and sale provisions, to deal with substantial personal property left behind following an unlawful detainer action under chapter 59.12 RCW. 171 Wn. App. at 336, 339, 342. The court expressly noted that chapter 59.12 RCW did not provide a procedure for the purchaser to dispose of the unlawful detainer defendant's property. *Excelsior*, 171 Wn. App. at 338. The court further held that the provisions of chapter 59.18 RCW were not applicable. *Excelsior*, 171 Wn. App. at 338. The court nonetheless held that the trial court's approval of the purchaser's voluntary use of the chapter 59.18 RCW framework "did not stray beyond the trial court's narrow jurisdiction in an unlawful detainer action." *Excelsior*, 171 Wn. App. at 344.

Like the purchaser in *Excelsior*, the Honses sought court guidance twice to clarify their obligations regarding the property. In accord with *Excelsior*, the superior court found that the Honses were not obligated to store or preserve personal property left behind following execution of the writ. The superior court was within its power to "resolve any issues necessarily related to the parties' dispute over such possession" when it approved of the Honses' plan to dispose of the property. *Excelsior*, 171 Wn. App. at 344-45 (quoting *Port of Longview*, 96 Wn. App. at 438). As such, the superior court did not err in issuing

its orders clarifying the Honses' obligations on execution of writ. (Underlining Added.)

(Appendix C at pp. 16-18.) Appellants are without any remaining rights in the personal property they left behind. Their appeal should be dismissed.

#### IV. RAP 18.1 REQUEST FOR ATTORNEY FEES

RAP 18.9 authorizes this Court to award compensatory damages against a party who files a frivolous appeal. *See, In re Recall Charges Against Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003). The Honses, at great expense, have been subject to prolonged litigation in multiple forums, some of which was judicially deemed to an “effort to somehow forestall foreclosure,” and “a scheme to delay and hinder the Honses with respect to their lien against the Lakebay property.” (Appendix X at p. 3, *quoting* bankruptcy court). This latest appeal is a continuation of this same abuse of the legal system. Appellants present no debatable issues and simply repeat some of the same challenges rejected in this Court’s most recent decision – a decision that was issued more than two months before appellants filed their opening brief.

The appeal is frivolous and a misuse of the judicial process and, this Court should grant attorneys’ fees pursuant to RAP 18.9.

V. CONCLUSION

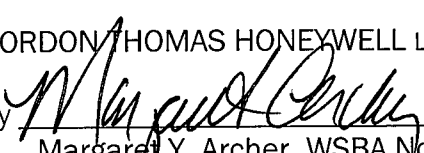
For the foregoing reasons, respondents Christopher and Sally Honse request the Court to affirm the decisions of the trial court.

Dated this 22<sup>nd</sup> day of February, 2016.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By

  
Margaret Y. Archer, WSBA No. 21224  
Attorneys for Respondents Honse

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 22<sup>nd</sup> day of February, 2016, I did serve via U.S. Mail, First Class, postage prepaid (or other method indicated below), true and correct copies of the foregoing by addressing and directing for delivery to the following:

Appellant  
Patrice Clinton  
9013 Key Peninsula Highway, Suite E-110  
Gig Harbor, WA 98349

Appellant  
Richard Sorrels  
9013 Key Peninsula Highway, Suite E-110  
Gig Harbor, WA 98349

  
Lisa Blakeney  
Legal Assistant to Margaret Y. Archer

**APPENDIX A**  
**ORDER GRANTING PLAINTIFF'S MOTION**  
**FOR SUMMARY JUDGMENT**  
**(CP 1557-59)**

0243

7417

6/30/2015



FILED  
DEPT. 6  
OPEN COURT

JUN 26 2015

Pierce County, Clerk  
By SA  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

CHRISTOPHER HONSE and SALLY HONSE,

Plaintiffs,

vs.

PATRICE CLINTON, RICHARD SORRELS,  
CHRISTOPHER SORRELS, as Trustee to  
RAVENSCREST TRUST and KEY CENTER  
ENTERPRISES, LLC,

Defendants.

NO. 13-2-13277-5

ORDER GRANTING PLAINTIFFS' SUMMARY  
JUDGMENT MOTION ON DAMAGES

ASSIGNED TO THE HONORABLE JACK  
NEVIN

HEARING DATE: June 26, 2015

THIS MATTER came on regularly for hearing on Plaintiffs' Motion for Summary Judgment on Damages Occasioned by Defendants' Sorrels and Clinton's Unlawful Detainer of 8717 Key Peninsula Highway. The Court having heard oral argument of counsel for plaintiffs Honse and the appearing defendants and reviewed the records and files herein, including:

1. Plaintiffs' Motion for Summary Judgment on Damages filed May 22, 2015;
2. Declaration of Chris Honse in Support of Motion for Summary Judgment filed May 22, 2015;
3. Declaration of Margaret Archer Attaching Pleadings related to Other Code Enforcement Actions Against Defendant Sorrels filed May 22, 2015;

ORDER GRANTING PLAINTIFFS' SUMMARY JUDGMENT MOTION ON  
DAMAGES - 1 of 3  
(13-2-13277-5)  
[4836-9280-4389]

CP 1557

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
POST OFFICE BOX 1157  
TACOMA, WASHINGTON 98401-1157  
(253) 620-6500 - FACSIMILE (253) 620-6565

0244

7417

6/30/2015

4. Findings of Fact and Conclusions of Law entered on October 13, 2013;
5. Judgment and Order for Writ of Restitution entered on October 13, 2013;
6. Order Clarifying Plaintiff's Obligations on Execution of Writ entered on November 22, 2013;
7. Declaration of Chris Honse filed on April 22, 2014;
8. Declaration of Mark Luppino filed on April 22, 2014;
9. Declaration of Stan Flemming filed on April 22, 2014;
10. Supplemental Order Clarifying Obligations on Execution of Writ Confirming Status of Abandoned Vehicles entered on May 2, 2014;
11. Declaration of Service on Richard Sorrels filed May 22, 2015;
12. Declaration of Mailing on Patricia Clinton and Richard Sorrels filed May 22, 2015;
13. Response to Motion for Summary Judgment filed June 16, 2015;
14. Declaration of Richard Sorrels in Opposition to Summary Judgment filed June 16, 2015;
15. Declaration of Martin Burns filed June 16, 2016;
16. (Second) Declaration of Richard Sorrels (with lease attached) filed June 17, 2015;
17. Plaintiffs' Reply in Support of Summary Judgment Motion filed June 22, 2015;
18. Declaration of Margaret Archer Re Recently Filed Residential Lease filed June 23, 2015; and

ORDER GRANTING PLAINTIFFS' SUMMARY JUDGMENT MOTION ON  
DAMAGES - 2 of 3  
(13-2-13277-5)  
[4836-9280-4389]

CP 1558

LAW OFFICES  
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1201 PACIFIC AVENUE, SUITE 2100  
POST OFFICE BOX 1157  
TACOMA, WASHINGTON 98401-1157  
(253) 620-6500 - FACSIMILE (253) 620-6565

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6/30/2015

The Court being fully advised in the premises, it is now, therefore

ORDERED, ADJUDGED AND DECREED that plaintiffs' summary judgment motion on damages occasioned by defendants' Sorrels and Clinton's unlawful detainer of 8717 Key Peninsula Highway is GRANTED and judgment should be entered against defendants Sorrels and Clinton and in favor of Christopher and Sally Honse in the amount of \$4,400.

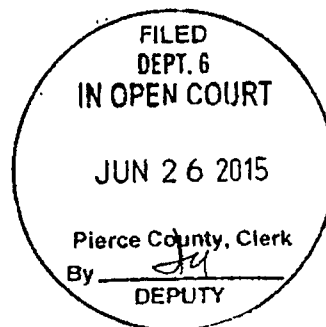
DONE IN OPEN COURT this 26<sup>th</sup> day of June, 2015.

Jack Nevin  
THE HONORABLE JACK NEVIN

Presented by:

GORDON THOMAS HONEYWELL LLP

By Margaret Y. Archer  
Margaret Y. Archer, WSBA No. 21224  
marcher@gth-law.com  
Attorneys for Plaintiffs



Approved as to form:

BURNS LAW PLLC

By Martin Burns  
Martin Burns, WSBA No. 23412  
Attorneys for Defendants

ORDER GRANTING PLAINTIFFS' SUMMARY JUDGMENT MOTION ON  
DAMAGES - 3 of 3  
(13-2-13277-5)  
[4836-9280-4389]

CP 1559

LAW OFFICES  
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TACOMA, WASHINGTON 98401-1157  
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**APPENDIX B**  
**JUDGMENT**  
**(CP 1554-56)**

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6/30/2015



13-2-13277-5 44912024 JD 06-30-15

FILED  
DEPT. 6  
OPEN COURT

JUN 26 2015

Pierce County, Clerk  
By *[Signature]*  
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

CHRISTOPHER HONSE and SALLY HONSE,

Plaintiffs,

vs.

PATRICE CLINTON, RICHARD SORRELS,  
CHRISTOPHER SORRELS, as Trustee to  
RAVENScrest TRUST and KEY CENTER  
ENTERPRISES,

Defendants.

NO. 13-2-13277-5

JUDGMENT

ASSIGNED TO THE HONORABLE JACK  
NEVIN

Hearing: June 26, 2015

JUDGMENT SUMMARY

- |    |   |                                     |
|----|---|-------------------------------------|
| 1. | Judgment Creditor:  | Christopher Honse and Sally Honse   |
| 2. | Judgment Debtor:  | Patrice Clinton and Richard Sorrels |
| 3. | Principal Judgment Amount:  | \$ 4,400.00                         |
| 4. | Prejudgment interest  | \$0                                 |
| 5. | Statutory Attorneys' Fees   | \$200.00                            |
| 6. | Statutory Costs   | \$ 446.00                           |
|    | TOTAL   | \$5,046.00                          |
| 7. | Judgment amount shall bear interest at 12% per annum (per Chapter 4.56, RCW). |                                     |

JUDGMENT - 1 of 3  
[4812-4031-7733]

CP 1554

LAW OFFICES  
GORDON THOMAS HONEYWELL LLP  
1201 PACIFIC AVENUE, SUITE 2100  
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(253) 620-6500 - FACSIMILE (253) 620-6565

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6/30/2015

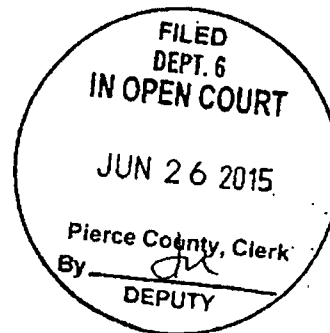
8. Attorney for judgment creditor: Margaret Y. Archer, Gordon Thomas Honeywell, LLP, 1201 Pacific Avenue, Suite 2100, Tacoma, Washington 98401-1157 (253.620-6550).

THIS MATTER came before the Court following plaintiffs Honses' Motion for Summary Judgment on Damages Occasioned by Defendants' Sorrels and Clinton's Unlawful Detainer. The Court, having entered an order granting this summary judgment motion and having reviewed and considered the records and files herein, finds judgment should be entered against defendants Patrice Clinton and Richard Sorrels in the principal sum of \$4,400.00 and, pursuant to RCW 4.84.030 and .010 costs in the amount of \$446.00 (comprised of the court filing fee of \$197 and services of process costs of \$249), and, pursuant to RCW 4.84.080, statutory attorney's fees in the amount of \$200.00, for a total of \$5,046.00. Now, therefore, it is hereby

ORDERED that plaintiffs Christopher Honse and Sally Honse shall have judgment against defendants Patrice Clinton and Richard Sorrels in the sum of \$5,046.00.

SO ORDERED this 26<sup>th</sup> day of June, 2015.

  
JUDGE JACK NEVIN



JUDGMENT - 2 of 3  
[4812-4031-7733]

CP 1555

LAW OFFICES  
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0042

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6/30/2015

1 Presented by:

2 GORDON THOMAS HONEYWELL LLP

3  
4 By 

Margaret Y. Archer, WSBA No. 21224

marcher@gth-law.com

Attorneys for Plaintiffs

7 Approved as to form:

8 BURNS LAW PLLC

9  
10 By 

Martin Burns, WSBA No. 23412

Attorneys for Defendants

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JUDGMENT - 3 of 3  
[4812-4031-7733]

CP 1556

LAW OFFICES  
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**APPENDIX C**  
**UNPUBLISHED OPINION**  
**CASE NO. 45616-9-II**  
**AND MANDATE**

November 13 2015 1:18 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-2-13277-5

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

CHRISTOPHER HONSE and SALLY  
HONSE,

Respondents,

v.

PATRICE CLINTON, RICHARD SORRELS,

Appellants,

CHRISTOPHER SORRELS, as Trustee to  
RAVENSCREST TRUST and KEY CENTER  
ENTERPRISES, LLC,

Defendants,

---

CHRISTOPHER HONSE and SALLY  
HONSE,

Respondents,

v.

PATRICE CLINTON, RICHARD SORRELS,

Appellants,

CHRISTOPHER SORRELS, as trustee to  
RAVENSCREST TRUST and KEY CENTER  
ENTERPRISES, LLC,

Defendants.

No. 45616-8-II

Consolidated with  
No. 46336-9-II

MANDATE

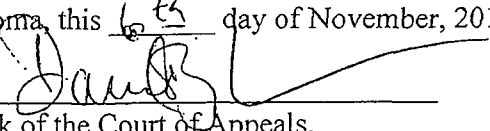
County Cause Nos.  
13-2-13277-5  
&  
13-2-13277-5

The State of Washington to: The Superior Court of the State of Washington  
in and for Pierce County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on September 29, 2015 became the decision terminating review of this court of the above entitled case on October 30, 2015. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 6<sup>th</sup> day of November, 2015.

  
Clerk of the Court of Appeals,  
State of Washington, Div. II

cc: Richard Sorrels  
Margaret Yvonne Archer  
Patrice Clinton

September 29, 2015

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

CHRISTOPHER HONSE and  
SALLY HONSE,

Respondents,

v.

PATRICE CLINTON, RICHARD SORRELS,

Appellants,

CHRISTOPHER SORRELS, as Trustee to  
RAVENSCREST TRUST and KEY CENTER  
ENTERPRISES, LLC,

Defendants.

CHRISTOPHER HONSE and  
SALLY HONSE,

Respondents,

v.

PATRICE CLINTON, RICHARD SORRELS,

Appellants,

CHRISTOPHER SORRELS, as Trustee to  
RAVENSCREST TRUST and KEY CENTER  
ENTERPRISES, LLC,

Defendants.

No. 45616-8-II

Consolidated with  
No. 46336-9-II

UNPUBLISHED OPINION

No. 46336-9-II

WORSWICK, J. — Patrice Clinton and Richard Sorrels, self-represented litigants, appeal a writ of restitution and subsequent orders in an unlawful detainer action commenced as a result of a trustee's sale. Clinton and Sorrels failed to make payments to Christopher and Sally Honse

No. 45616-8-II  
Cons. with No. 46336-9-II

after they entered into an owner-financed sale for the purchase of the Honses' real property. The Honses obtained a writ of restitution and subsequent clarifying orders, giving them possession of the real property and allowing them to dispose of Clinton's and Sorrels's personal property. Clinton and Sorrels argue that the superior court erred in issuing the writ and the clarifying orders by (1) ruling that the Honses gave Clinton and Sorrels sufficient notice under RCW 59.12.032 and RCW 61.24.040, (2) extending the writ of restitution, (3) refusing to grant Clinton and Sorrels a continuance on a partial motion for summary judgment, (4) setting an appeal bond in an unreasonable amount, and (5) not ordering the Honses to store Clinton's and Sorrels's property under RCW 59.18.312. We affirm the writ and the clarifying orders.

#### FACTS

The procedural facts in this case are convoluted. This case is, in essence, an unlawful detainer action. However, matters became complicated through a series of filings in the superior court.

Christopher and Sally Honse owned approximately six acres of real property in Lakebay, Washington. In 2006, the Honses sold the property to Patrice Clinton through a seller-financed transaction for which the Honses accepted a promissory note from Clinton secured by a deed of trust against the property. Clinton's significant other, Richard Sorrels, lived with Clinton on the property and ran an unauthorized business selling old vehicles.

By 2008, Clinton had defaulted on the promissory note. Since that time, the property has been the subject of protracted litigation. The Honses attempted to regain the property over a period of four years through two foreclosure actions. Clinton and Sorrels (or entities they controlled) delayed the foreclosure process through the filing of four bankruptcy proceedings.

No. 45616-8-II  
Cons. with No. 46336-9-II

The bankruptcy court found that these filings were an “effort to somehow forestall foreclosure.” Clerk’s Papers (CP) at 21. The bankruptcy court also found that Clinton and Sorrels were engaged in “a scheme to delay and hinder the Honses with respect to their lien against the Lakebay property.” CP at 23.

In 2013, the Honses successfully foreclosed through a trustee’s sale and regained title to the property. At the time of the trustee’s sale, Clinton owed more than \$410,000 to the Honses. Law firm Davies Pearson, PC was appointed as successor trustee. There are two discrepancies in the documents supporting the sale. First, on the amended notice of trustee’s sale, James Tomlinson signed the document “[f]or” Brian King, but the notary attestation states that Brian King appeared and signed. CP at 125. Second, the amended notice of trustee’s sale and the notice of foreclosure contained two different amounts for the principal balance owed.<sup>1</sup> Neither Clinton nor Sorrels initiated any action to enjoin or restrain the trustee’s sale.

After the foreclosure, both Clinton and Sorrels remained on the property. The Honses then commenced an unlawful detainer action, and the superior court set a show cause hearing for October 17, 2013.

At the show cause hearing, Clinton and Sorrels argued that the trustee’s sale was defective. After hearing testimony and considering the evidence, a superior court commissioner entered findings of fact and conclusions of law. As part of the findings of fact, the commissioner

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<sup>1</sup> The notice of foreclosure stated the principal amount due as \$263,901.64. The amended notice of trustee’s sale stated the amount due as \$175,053.40.

No. 45616-8-II  
Cons. with No. 46336-9-II

found: "Prior to conducting the Trustee's Sale, the Trustee provided notice in compliance with RCW 61.24.040 and .060." CP at 135.

Accordingly, the commissioner's conclusions of law included a determination that Clinton and Sorrels should be adjudged guilty of unlawful detainer, that their occupancy at the Lakebay property should be terminated, and that they should be evicted under a writ of restitution. The commissioner also entered a writ of restitution. Thirteen days later, another commissioner extended the writ "in increments of twenty days until possession in the manner provided by law." CP at 302-03. The Honses obtained this extension after Clinton and Sorrels requested additional time to vacate the premises.

On October 23, 2013, the Honses filed a motion for partial summary judgment to "confirm" their right of possession. CP at 144. On October 28, Clinton and Sorrels filed a motion to revise the first commissioner's ruling regarding the writ of restitution. Clinton and Sorrels did not assign error to any of the commissioner's findings of fact. On November 12 and 13, 2013, Clinton and Sorrels served interrogatories and requests for production on the Honses. At the same time, Clinton and Sorrels moved for a continuance of the summary judgment hearing so that they could retain counsel and obtain answers to outstanding discovery requests. On November 13, the Honses filed a motion asking the superior court to clarify their responsibilities under the writ regarding storage of substantial personal property left behind by Clinton and Sorrels, including numerous vehicles in varying states of disrepair.

On November 22, 2013, after hearing arguments from all parties, the superior court granted the Honses' motion for partial summary judgment ruling, as a matter of law, that they were entitled to possession of the real property. The superior court denied Clinton and Sorrel's

No. 45616-8-II  
Cons. with No. 46336-9-II

motion for a continuance, relying in part on the unchallenged findings of the bankruptcy court that Clinton and Sorrels had engaged in an extended “scheme . . . to hinder, delay, or defraud creditors.” Verbatim Report of Proceedings (VRP) (Nov. 22, 2013) at 10. Additionally, the superior court denied Clinton and Sorrels’s motion to revise the commissioner’s rulings regarding the writ of restitution without making additional findings of fact or conclusions of law. Finally, the superior court entered an order which ruled that the Honses could, without further notice to Clinton and Sorrels, dispose of any and all personal property left following execution of the writ. In an ex parte hearing three days later, the superior court set a bond amount of \$295,000 to stay the writ of restitution. Clinton and Sorrels appealed.

The sheriff executed the writ of restitution on November 26, 2013. Despite the court’s order clarifying that the Honses could dispose of the remaining personal property, Clinton and Sorrels served on the Honses a written request to store their personal property.

Over the next several months, the Honses worked to inventory and remove the property left behind. Of the 188 vehicles on the property, 173 qualified as “junk vehicles” under the Pierce County Code. CP at 942 (quoting PIERCE COUNTY CODE 8.08.030(F)). On May 2, 2014, the superior court entered an order clarifying its November 22 ruling that the Honses were permitted to dispose of the remaining vehicles left on the property. Clinton and Sorrels then filed an appeal contesting this superior court order, which we consolidated with their first appeal.

## ANALYSIS

### I. STANDARDS OF REVIEW

Where the superior court affirms the commissioner’s order without entering findings or conclusions of its own, we review the commissioner’s findings and conclusions as the superior

No. 45616-8-II  
Cons. with No. 46336-9-II

court's findings and conclusions. See *In re Marriage of Williams*, 156 Wn. App. 22, 27-28, 232 P.3d 573 (2010). We review whether substantial evidence supports the findings of fact and if so, whether those findings support the conclusions of law. *Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012). Evidence is sufficient when it is enough to "persuade a rational, fair-minded person that a finding is true." *Casterline*, 168 Wn. App. at 381. We consider unchallenged findings of fact to be verities on appeal. *Casterline*, 168 Wn. App. at 381 (citing *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 808, 828 P.2d 549 (1992)). Unchallenged conclusions of law become the law of the case. *King Aircraft Sales, Inc. v. Lane*, 68 Wn. App. 706, 716-17, 846 P.2d 550 (1993).

Decisions of a court commissioner are subject to revision by the superior court upon the records of the case and the findings of fact and conclusions of law entered by the court commissioner.<sup>2</sup> RCW 2.24.050. The scope of the superior court's review is limited to the evidence presented to the commissioner. RCW 2.24.050 (stating that the scope of review on motion for revision "shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner"); *In re Marriage of Moody*, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999). To obtain review on appeal in this case, Sorrels must meet four procedural requirements. First, when considering an appeal from the motion to revise, the superior court and this court are limited to the evidence presented to the commissioner; any

---

<sup>2</sup> Because the commissioner granted the Honses a writ of restitution and a judgment after the show cause hearing, the superior court's grant of summary judgment appears to be surplusage. Because the summary judgment is surplusage, we do not use the summary judgment standard of review.

No. 45616-8-II

Cons. with No. 46336-9-II

evidence not before the commissioner cannot be considered. *Moody*, 137 Wn.2d at 992-93.

Second, under Pierce County Local Rule (PCLR) 7(a)(12)(C), a motion for revision must state with specificity the portion of the commissioner's order sought to be revised. Any portion not so specified is binding as if no motion for revision had been made. PCLR 7(a)(12)(C). Third, we treat any findings of fact to which no error has been assigned as verities on appeal.<sup>3</sup> RAP 10.3(g). And fourth, we decline to consider arguments made for the first time on appeal. RAP 2.5.

The "Deed of Trust Act," chapter 61.24 RCW, provides that the purchaser at a trustee's sale is entitled to possession on the twentieth day following the sale and "shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW." RCW 61.24.060(1). An unlawful detainer action is a statutory proceeding that provides an expedited method of resolving the right to possession of property. *Christensen v. Ellsworth*, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007). Upon filing an action for unlawful detainer, the plaintiff may apply for an order directing the defendant to appear and show cause why a writ of restitution should not issue restoring possession of the property to the plaintiff. RCW 61.24.040; RCW 59.12.090.

## II. WRIT OF RESTITUTION'S ISSUANCE

Clinton and Sorrels argue that the court erred in issuing the writ of restitution because the Honses failed to provide notice under RCW 59.12.032 and failed to comply with RCW

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<sup>3</sup> Thus, a superior court adopts a commissioner's findings of fact by denying a motion to revise. *Williams*, 156 Wn. App. at 27-28. Then, those findings are verities on appeal if no error is assigned. RAP 10.3(g).

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61.24.040. The Honses argue that Clinton and Sorrels received the appropriate notices due under the statutes and that RCW 61.24.040 does not require strict compliance in order to sustain a writ of restitution. We agree with the Honses.

A. *Notice under Unlawful Detainer Statute*

Clinton and Sorrels first argue that the Honses were required to provide 60 days' notice to vacate under RCW 59.12.032. Because 60 days' notice to vacate was not provided, they argue that the court erred by issuing a writ of restitution. We disagree.

Clinton and Sorrels point to RCW 59.12.032, which requires that unlawful detainer actions initiated under chapter 59.12 RCW comply with the requirements of RCW 61.24.040 and .060. However, those statutes do not require the Honses to give Clinton and Sorrels 60 days' notice. Because the Honses claimed title to the property as the result of a trustee's sale, chapter 61.24 RCW applies. RCW 61.24.060(2) requires the purchaser at a trustee's sale to provide notice to the occupants and tenants of *tenant-occupied property*. The phrase "tenant-occupied property" is defined as "property consisting solely of residential real property that is the principal residence of a *tenant* subject to chapter 59.18 RCW." RCW 61.24.005(15) (emphasis added). As used in that definition, a "tenant" subject to chapter 59.18 RCW is "any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a *rental agreement*." RCW 59.18.030(21) (emphasis added). Additionally, the section of the written notice form providing 60 days' notice expressly applies to "tenant[s] or subtenant[s] in possession of the property that was purchased." RCW 61.24.060(2).

Here, neither Clinton nor Sorrels occupied the property under a rental agreement. Clinton was the grantor under the deed of trust, not a tenant of the property. Sorrels testified

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during the show cause hearing that he was not a tenant. Thus, the Honses were entitled to possession on the 20th day following the trustee sale, and did not need to give 60 days' notice.

The Honses complied with the applicable 20-day requirement before seeking possession of the property. The trustee's sale occurred on July 12, 2013. The Honses filed their complaint for unlawful detainer and for order of eviction on September 24, 2013. Clinton and Sorrels accepted service of the summons, complaint, and order to show cause on October 17, 2013. Because the Honses did not seek to obtain possession until more than 20 days after the trustee's sale, the superior court properly issued the writ of restitution. Substantial evidence supports the finding of fact that the Honses provided adequate notice to Clinton and Sorrels. *Casterline*, 168 Wn. App. at 381.

**B. *Compliance with Trustee's Sale Requirements***

Clinton and Sorrels next argue that the writ of restitution was improperly issued because of defects in the trustee's sale under RCW 61.24.040. Under RCW 59.12.032, an unlawful detainer action following a trustee's sale must comply with the requirements of RCW 61.24.060. Clinton and Sorrels point out two defects in the trustee's sale: (1) the principal debt stated on the amended notice of trustee's sale differed from the debt listed on the notice of foreclosure, and (2) a notary attested to a signature on the Amended Notice of Trustee's Sale when in fact someone else signed on behalf of the original person. These defects, Clinton and Sorrels argue, were sufficient to halt the issuance of a writ of restitution. We disagree.

**1. *Principal Amount Discrepancies***

Clinton and Sorrels argue that the writ of restitution was improperly issued because there was a discrepancy in the principal amounts listed on the amended notice of trustee's sale and the

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notice of foreclosure. We refuse to consider this issue because it relies on evidence not before the commissioner. None of the documents before the commissioner contained the notice of foreclosure or the amended notice of trustee's sale. Instead, these documents appear to have entered the record for the first time as part of the Honses' motion for summary judgment. Thus, any claim relating to these documents' compliance with RCW 61.24.060 depends on evidence outside the commissioner's record, and the superior court could not consider it. RCW 2.24.050.

## *2. Improperly Attested Signature*

Clinton and Sorrels also argue that the writ of restitution was improperly issued because a notary attested to a signature when a different person signed the amended notice of trustee's sale. We disagree.

The Honses provided adequate notice of the trustee's sale despite the improperly attested signature. Clinton and Sorrels cite *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 792, 295 P.3d 1179 (2013), for the proposition that the accuracy of a signed notarization is crucial to the issue of notice. However, *Klem* dealt with predating notarizations and "robo-signing," neither of which is at issue here. 176 Wn.2d at 792.

Moreover, it is improper to challenge the notice of trustee's sale in an unlawful detainer action. Clinton and Sorrels concede that the role of the commissioner in an unlawful detainer action is "not deciding if the trustee sale is valid or not." Br. of Appellant at 17. The question of whether the court properly issued the writ of restitution turns on whether the Honses had a right of possession and whether the proper notices had been afforded, not on whether the trustee's sale was correctly executed.

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The record here shows that the Honses complied with RCW 61.24.040 and RCW 61.24.060 as required under RCW 59.12.032. It is a verity on appeal that a trustee's sale occurred on July 12, 2013.<sup>4</sup> Chapter 61.24 RCW provides remedies to the grantor of a trust deed to restrain a threatened sale by the trustee. RCW 61.24.130. Clinton and Sorrels did not attempt to restrain the trustee's sale on the basis of the notary signature or the inconsistent principal balance amounts, despite having evidence of both defects prior to the sale. The Honses did not initiate this unlawful detainer action until at least 20 days after the trustee's sale, complying with the requirements under RCW 61.24.060. The notices provided to Clinton and Sorrels complied with RCW 61.24.040 as being "substantially" in the form provided. RCW 61.24.040(f). Accordingly, we uphold the issuance of the writ under the evidence before the commissioner.

### III. WRIT OF RESTITUTION'S EXTENSION

Clinton and Sorrels also argue that the superior court erred in extending the writ of restitution in increments of 20 days and without notice to Clinton and Sorrels. We decline to address this issue, because it is moot.

"A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief." *Josephinium Assocs. v. Kahli*, 111 Wn. App. 617, 622, 45 P.3d 627 (2002) (quoting *Snohomish County v. State*, 69 Wn. App. 655, 660, 850 P.2d 546 (1993)). Here, we cannot provide effective relief to Clinton and Sorrels. The writ of restitution has been executed; we cannot alter the extensions that were given before it was executed.

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<sup>4</sup> The superior court adopted this finding of fact and Clinton and Sorrels do not assign error to it on appeal; thus, it is a verity. RAP 10.3(g).

#### IV. REFUSAL TO GRANT CONTINUANCE

The Honses obtained a partial summary judgment “confirming” their right to possession of the contested property. Clinton and Sorrels argue that the superior court erred by failing to grant their CR 56(f)<sup>5</sup> motion to continue the summary judgment hearing for the purposes of obtaining evidence and hiring legal counsel. The Honses argue that denial of the continuance motion was proper because further discovery would not have changed the outcome of the summary judgment hearing. Because the writ of restitution established the Honses’ right of possession, the order granting summary judgment did not affect any aspect of the case. Nonetheless, in the interest of completeness, we address these arguments and agree with the Honses.

Under CR 56, a party seeking to recover upon a claim may move for a summary judgment in his favor upon all or any part of the claim. CR 56(a). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). When a party opposing a CR 56 motion is unable to timely present facts essential to justify his opposition, the court “*may* order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had.” CR 56(f) (emphasis added). Although a court may continue a summary judgment hearing to permit further discovery, denial is proper when “the desired evidence will not raise a genuine

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<sup>5</sup> CR 56(f) provides: “Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party’s opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.”

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issue of material fact.” *Pelton v. Tri-State Mem’l Hosp., Inc.*, 66 Wn. App. 350, 356, 831 P.2d 1147 (1992) (quoting *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)). We review a trial court’s decision on a request to continue the summary judgment for abuse of discretion. *Bldg. Indus. Ass’n of Washington v. McCarthy*, 152 Wn. App. 720, 743, 218 P.3d 196 (2009). “‘A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.’” *Leda v. Whisnand*, 150 Wn. App. 69, 79 n.2, 207 P.3d 468 (2009) (quoting *Wash. State Phys. Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993)).

Here, the Honses requested summary judgment to “confirm” their right of possession pursuant to the 2013 trustee deed. In order to obtain a CR 56(f) continuance for the purpose of obtaining additional discovery, Clinton and Sorrels were required to show the superior court how the evidence they sought would have raised a genuine issue of material fact. *Pelton*, 66 Wn. App. at 356. The information Clinton and Sorrels sought related to “the invalid notary, the discrepancies in the numbers and failure to give statutory notices.” Br. of Appellant at 19. However, the court had all the essential facts regarding these issues. Clinton and Sorrels do not explain how additional discovery would have created a genuine issue of material fact. Accordingly, Clinton and Sorrels failed to carry their burden, and the superior court did not err by refusing the motion to continue on this basis.

Clinton and Sorrels asked for a continuance for the additional purpose of retaining legal counsel. Clinton and Sorrels cite *Coggle v. Snow*, 56 Wn. App. 499, 507-08, 784 P.2d 554 (1990), in support of their contention that the court abused its discretion in denying a continuance on this ground. But *Coggle* is factually distinguishable. In that case, Coggle’s first

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attorney, who was retiring, requested that a new attorney substitute as counsel. *Coggle*, 56 Wn. App. at 502. The new attorney appeared for Coggle one week after a motion for summary judgment had been filed. *Coggle*, 56 Wn. App. at 501-502. The superior court denied Coggle's motion for continuance, but the Court of Appeals reversed, holding that Coggle's new attorney needed more time to follow up on work initiated by previous counsel. *Coggle*, 56 Wn. App. at 508. Importantly, the court held that Coggle had met the other criteria for a continuance by identifying the evidence he sought and explaining that the declarations would rebut the defense expert testimony. *Coggle*, 56 Wn. App. at 508.

In contrast, at the time of their continuance motion, Clinton and Sorrels had not retained new counsel. The motion for continuance and associated declaration suggests that Clinton and Sorrels had spoken with (and been declined by) at least six attorneys. Clinton and Sorrels did not provide any evidence to suggest that the seventh attorney would agree to representation if given more time. Clinton and Sorrels did provide a letter from one attorney citing the short notice as a reason to decline representation. But the attorney also noted that any representation would be contingent on "an appropriate agreement with Mr. Sorrels and [Ms.] Clinton as to a retainer and the positions to be advanced in the litigation." CP at 485. Clinton and Sorrels did not demonstrate to the superior court that those conditions would be met if a continuance were granted. In addition, the superior court noted the bankruptcy court's finding that Clinton and Sorrels had engaged in a scheme to hinder or delay the Honses from foreclosing the property.

Given the lengthy struggle endured by the Honses in restoring possession of their property, the fact that Clinton and Sorrels sought legal counsel only shortly before the motion for summary judgment, the superior court's recognition that Clinton and Sorrels used legal processes for the purposes of delay, the superior court's denial of the motion to continue the motion for summary judgment on this basis rested on tenable grounds; thus the court did not abuse its discretion. The superior court did not err in denying the continuance motion.

#### V. BOND TO STAY WRIT OF RESTITUTION

Clinton and Sorrels also argue that the superior court abused its discretion by setting the amount of stay bond on appeal at \$295,000. We decline to address this issue, because it is moot.

A stay bond on appeal halts the writ of restitution on the condition that the defendant pay "all rents and other damages justly accruing to the plaintiff during the pendency of the proceeding." RCW 59.12.200. The purpose of the bond is to "secure the [owner] against losses during the pendency of the proceedings when the [occupant] continues to occupy the premises." *Hous. Auth. v. Pleasant*, 126 Wn. App. 382, 390, 109 P.3d 422 (2005).

This issue is moot. "A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief." *Josephinium*, 111 Wn. App. at 622 (quoting *Snohomish County*, 69 Wn. App. at 660). Posting a stay bond halts execution of the writ while the parties resolve the rights of possession. The sheriff executed the writ of restitution on November 26, 2013. Because the writ of restitution was properly issued, the issue of the stay bond on appeal is moot.

## VI. STORAGE OF PROPERTY

Finally, Clinton and Sorrels argue that the superior court erred in not requiring the Honses to store the substantial property left behind. The Honses argue that Clinton and Sorrels were not entitled to storage rights conferred under the Residential Landlord-Tenant Act, chapter 59.18 RCW. We agree with the Honses.

When serving a *residential tenant* with a writ of restitution under RCW 59.12.100, the sheriff must provide written notice to the tenant that the landlord must store the tenant's property if the tenant serves a written request on the landlord to do so. RCW 59.18.312(5). “Although the court [in an unlawful detainer action] does not sit as a court of general jurisdiction to decide issues unrelated to possession of the subject property, it may resolve any issues necessarily related to the parties’ dispute over such possession.” *Excelsior Mortgage Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 344–45, 287 P.3d 21 (2012) (alteration in original) (quoting *Port of Longview v. Int’l Raw Materials, Ltd.*, 96 Wn. App. 431, 438, 979 P.2d 917 (1999)).

Clinton and Sorrels cite RCW 59.18.312(5) for the proposition that execution of a writ afforded them the right to require the Honses to store the substantial property left behind. However, RCW 59.18.312(5) refers to the duties of “the landlord” and the service of a written request by “the tenant.” As discussed previously, Clinton (as grantor) and Sorrels (as occupant) do not qualify as residential tenants—neither do the Honses qualify as landlords. The Honses brought this action under the Deed of Trust Act, chapter 61.24 RCW. RCW 61.24.060 states that a “purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.” RCW 61.24.060(1). The language of this statute

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provides a *purchaser* with a mechanism to obtain possession of the property; it does not copy the entirety of chapter 59.12 RCW into chapter 61.24 RCW.

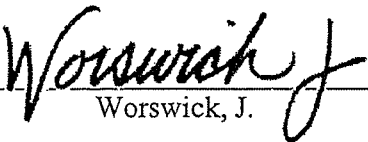
In fact, RCW 61.24.060 does not prescribe any responsibility to a purchaser at a trustee's sale to store property under chapter 61.24 RCW. On this point, the case of *Excelsior Mortgage Equity Fund II, LLC v. Schroeder* is instructive. In *Excelsior*, the purchaser at a trustee's sale voluntarily elected to utilize portions of RCW 59.18.312, specifically notice and sale provisions, to deal with substantial personal property left behind following an unlawful detainer action under chapter 59.12 RCW. 171 Wn. App. at 336, 339, 342. The court expressly noted that chapter 59.12 RCW did not provide a procedure for the purchaser to dispose of the unlawful detainer defendant's property. *Excelsior*, 171 Wn. App. at 338. The court further held that the provisions of chapter 59.18 RCW were not applicable. *Excelsior*, 171 Wn. App. at 338. The court nonetheless held that the trial court's approval of the purchaser's voluntary use of the chapter 59.18 RCW framework "did not stray beyond the trial court's narrow jurisdiction in an unlawful detainer action." *Excelsior*, 171 Wn. App. at 344.

Like the purchaser in *Excelsior*, the Honses sought court guidance twice to clarify their obligations regarding the property. In accord with *Excelsior*, the superior court found that the Honses were not obligated to store or preserve personal property left behind following execution of the writ. The superior court was within its power to "resolve any issues necessarily related to the parties' dispute over such possession" when it approved of the Honses' plan to dispose of the property. *Excelsior*, 171 Wn. App. at 344-45 (quoting *Port of Longview*, 96 Wn. App. at 438). As such, the superior court did not err in issuing its orders clarifying the Honses' obligations on execution of writ.

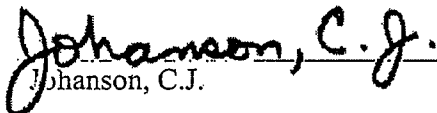
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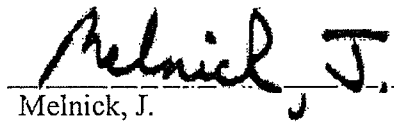
Because the commissioner and the superior court did not err by entering the writ or any of the challenged orders, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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Worswick, J.

We concur:

  
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Johanson, C.J.

  
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Melnick, J.